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 16 JOHN J. COTA

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA,

21 Case No. CR 08-0160 SI

22 Plaintiff,

23 v.

24 JOHN J. COTA,  
 25 and  
 26 FLEET MANAGEMENT LIMITED,  
 27 Defendants.

DEFENDANT JOHN J. COTA'S NOTICE  
 OF MOTION AND MOTION TO SEVER  
 CHARGES AGAINST DEFENDANT  
 FLEET MANAGEMENT, INC.

28 Date: September 22, 2008

Time : 11:00 a.m.

Judge: Honorable Susan Illston

Speedy Trial Act; Excludable Time through  
 Disposition, 18 U.S.C. § 3161(h)(1)(F)

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

23 **PLEASE TAKE NOTICE** that at 11:00 a.m. on September 22, 2008 or as soon  
 24 thereafter as counsel may be heard in the above entitled Court, Defendant JOHN J. COTA  
 25 ("Captain Cota") will and hereby does move this Court for an order severing the charges against  
 26 Captain Cota in the Second Superseding Indictment ("Indictment") in the above-captioned  
 27 matter from the charges in the Indictment against Defendant Fleet Management, Inc. ("Fleet").

The Motion is brought pursuant to Federal Rule of Criminal Procedure 14. Severance is proper due to the risk of prejudice to Captain Cota if Defendants are jointly tried. Fleet's proposed defense is highly prejudicial to Captain Cota and is based upon speculation, innuendo, and character assassination. This motion is made and based upon this Notice and Motion and Motion, the Memorandum of Points and Authorities and exhibits in support thereof, the complete files and records in this matter, and upon such other matters as may be presented to the Court at the time of the hearing.

Respectfully submitted,

K& L GATES LLP

Dated: August 22, 2008

By /s/ Jeffrey L. Bornstein

Jeffrey L. Bornstein, Esq.

Luke G. Anderson, Esq.

Barry M. Hartman, Esq., *Admitted Pro Hac Vice*  
Christopher R. Tate, Esq., *Admitted Pro Hac Vice*

Attorneys for Defendant  
JOHN J. COTA

## PROOF OF SERVICE

I am employed in the County of San Francisco, State of California by a member of the Bar of this Court, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 55 Second Street, Suite 1700, San Francisco, CA 94105. On August 22, 2008, I served the document(s) described as:

**DEFENDANT JOHN J. COTA'S NOTICE OF MOTION AND MOTION TO SEVER CHARGES AGAINST DEFENDANT FLEET MANAGEMENT, INC.**

on the parties to this action named on the attached service list by the method described below.

(BY PERSONAL SERVICE) I caused a true and correct copy of said document(s) to be served by hand to the addressee(s) listed above, with the name and address of the person served shown on the envelope.

(BY OVERNIGHT DELIVERY) I enclosed a true and correct copy of said document(s) in an envelope/package provided by an overnight delivery carrier addressed to the addressee(s) listed above, sealed it, and placed it for collection and overnight delivery following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for overnight delivery. On the same day that correspondence is placed for collection and overnight delivery, it is collected by an overnight delivery carrier. Delivery fees are pre-paid or provided for in accordance with the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP.

(BY ELECTRONIC TRANSMISSION) I transmitted a true and correct copy of said document(s) by electronic mail to the offices of the addressee(s). I did not receive, within a reasonable time after the transmission, any message or other indication that the transmission was unsuccessful.

(BY FACSIMILE) I transmitted a true and correct copy of said document(s) by facsimile to the offices of the addressee(s). Upon completion of the facsimile transmission, a transmission report was issued showing the transmission was complete and without error.

(BY U.S. MAIL) I enclosed a true and correct copy of said document(s) in an envelope addressed to the addressee(s) listed above and placed it for collection and mailing following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid at San Francisco, California.

Executed on August 22, 2008 at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s Michelle Crawford

1 **SERVICE LIST**

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